

# Critical Analysis of TLPI No. 4 Affecting the Brisbane City Plan 2000

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This article critically analyses the Brisbane City Council's ("Council") proposed Temporary Local Planning Instrument No. 4 (TLPI) and the Planning Statement which seeks to justify its approval by the Minister for Local Government and Planning ("Minister"). It has been prepared in the interests of ensuring that in deciding whether to approve the TLPI, the Minister is made fully aware of all relevant facts and circumstances and of the likely consequences of that decision, and in the interests of informed public debate on this issue. In particular, this article provides analysis which suggests that the Minister should be highly concerned that the introduction of the Temporary Local Planning Instrument does not meet the test of advancing the purpose of the Integrated Planning Act, which, among other things, is to ensure decision-making processes are accountable and efficient (s.1.2.3(1)(a)(iii)). The introduction of the TLPI will bring with it an unacceptable level of uncertainty about decision-making in the city centre, because of its vague provisions, which inevitably will tend to be exercised arbitrarily.

## Planning Statement

The Planning Statement issued by the Brisbane City Council, accompanying the TLPI, purports to provide justification for the approval of the TLPI by the Minister, under Section 2.1.10(2) of the *Integrated Planning Act 1997* ("IPA"). The statement is divided into six sections. In respect of each, the following comments are made:

### 1.0 Purpose of Statement

*"This statement concludes there is an overwhelming risk of serious, adverse, cultural, economic or social conditions occurring in the CBD, and the delay involved in using Schedule 1 (of the IPA) to amend the planning scheme as it pertains to the CBD part of Brisbane City Plan 2000, would increase the risk".*

As the comments which follow will demonstrate, the Planning Statement makes a number of broad generalisations and bald assertions, but contains no examples or evidence. It does not demonstrate either by reasoned argument or evidence that there is any overwhelming risk of serious, adverse, cultural, economic or social conditions occurring to Brisbane CBD as a result of the continuing application of the present City Centre Local Plan and Code pending the review of these provisions of City Plan.

## 2.0 Context

### 2.1 The Fabric of the CBD

The comments contained in this section of the Statement appear to be factually correct. They simply seek to demonstrate the importance of the CBD to the residents of Brisbane and to the State as a whole. The Statement continues:

*“It follows therefore, that planning for the CBD is one of the most important planning functions of the Brisbane City Council, and that such planning must be responsive to and supportive of, the inherent qualities and characteristics of the CBD.”*

Brisbane’s City Plan 2000 was formulated, with significant public consultation and input, before and after the commencement of IPA, and became operative in October 2000. When it was drafted, it was responsive to and supportive of the inherent qualities and characteristics of the CBD. Were this not the case, the drafters of City Plan 2000 would have been derelict in their duties. It is quite apparent from reading the provisions of City Plan 2000 relating to the CBD, that the Council went to great lengths to foster and protect those inherent qualities and characteristics, and to build upon them. The implication that the drafter of City Plan somehow got this wrong does not ring true, and is, in fact, wrong. Certainly, there may be some room to look more closely at some issues, and improve the plan. However, to suggest, five years later, that that Plan is so bad that an emergency situation has arisen, when the largest and best equipped local government in Australia has only relatively recently prepared its plan for the most important area of the State, seems a little bizarre.

### 2.2 Observations About Existing Planning Controls for the CBD

In this section the Council seeks to denigrate the existing provisions of City Plan, which it drafted barely five years ago, in the following terms:

*“The existing controls have the following characteristics. They:*

- have most application to development on private land;*
- attempt to provide certainty for centre activities/uses;*
- provide simplistic building form controls and land use precinct direction; and*
- provide economic stimulus, in part, through allowing very generous height opportunities once certain tower shape criteria are met.*

*The existing controls do not meaningfully address:*

- other definable land use or character precincts;*
- the local environmental context of particular sites;*
- impacts on the public domain;*
- the relationship between site area and building intensity;*
- the connectivity between sites and across the CBD; and*

- *the importance of and design benefits that flow from site amalgamations.*

*The circumstances at the time of the preparation of the City Plan (1997-1999) were quite different to now. At the time a very limited amount of residential development was occurring in the Centre Business District. However, since the introduction of the City Plan in October 2000 the rate of investment and preference towards high rise city living has been unprecedented, highlighting shortfalls in the operation of the current CBD controls.”*

This passage is overly simplistic and indeed misleading. Code assessment of applications involves the assessment of impacts by testing them against the purpose and performance criteria of the City Centre Local Plan Code, as well as other applicable codes such as the Heritage Place Code. Those same codes also apply to impact assessable applications.

The current provisions of City Plan recognised the residential development which had already taken place in the CBD, and sought to encourage its continuation. At the time City Plan was prepared, there were several existing high rise residential towers. The City Centre Local Area Plan recognised these areas in Map A – Components of the City Centre – as “Predominant Residential Areas”. One such area is the City block bounded by Margaret, Alice, George and Edward Streets, which contains a number of medium-rise residential towers and hotels. This sub-precinct has a height restriction of 45 metres or 10 stories under the current provisions of the City Plan. The other identified residential area is in Petrie Bight, bounded by Adelaide, Queen and Boundary Streets. This area is subject to the general 250 metre height threshold, and to the “tangential rectangle” GFA restrictions.

Despite this existing pattern of residential development in the CBD, the City Centre Local Plan provided that:

*“The City Centre also provides **opportunities for high density living** giving its residents and visitors convenient and affordable choice of accommodation.”*

- *high density offices and higher order retail activities are to be located in a compact City Centre linked by transport corridors to Major Centres. **The Centre is also to contain high intensity residential uses that promote the vitality of the Centre and make best use of existing infrastructure**” (City Plan 2000 Chapter 4 Section 2.2)*

#### *“3.4 Residential*

*Residential development **is encouraged throughout the City Centre** to support retail and entertainment activities, create after-hours activity, enhance perceptions of safety through greater activity, and promote a vibrant and economically strong City Centre.*

***Residential accommodation predominates adjacent to the Botanic Gardens and Petrie Bight. To ensure this residential character is maintained**, residential development should be the predominant use in the blocks bounded by Margaret, Edward, Alice and George Streets, and by the Story Bridge, Ivory, Adelaide and Queen Streets and Patrick Lane.*

*Residential accommodation may be provided either as part of mixed office and shopping developments, or as stand alone developments. **Residential development in the City Centre has an urban context as part of an economically viable and diverse 24 hour Centre.** Activity and noise in the City Centre will be greater than that found in suburban residential locations.”*

*“The design of residential buildings in the City Centre is to incorporate acoustic measures to achieve protection from nearby existing non-residential noise generating uses such as restaurants, hotels, nightclubs and other recreational activities.” (City Plan 2000 Chapter 4 Section 3.4)*

It is clear from the above provisions of City Plan 2000, and from the drafting of the Level of Assessment Table and Code which follow them, that the Council went out of its way to encourage residential development in the CBD, not only in the predominantly residential precincts, but also outside those precincts. It is quite extraordinary that while the State Government is saying through the office of Urban Management that urban sprawl must be arrested through densification in and around centres, the Council should be expressing grave concern about the emerging preference for high rise unit living in the CBD. This preference simply reflects Brisbane’s emergence as a modern, international, “liveable” city, and it is in line with a trend that is necessary if urban sprawl is to be contained while economic growth is sustained.

It is even more difficult to understand the assertion that the existing planning controls do not meaningfully address “other definable land use or character precincts”. The City Centre Local Plan specifically recognises all of the CBD’s open spaces (see Map A) as well as the retail heart and the predominantly residential areas. If there are other definable land uses or character precincts apart from those mentioned in the City Centre Local Plan, then where are they, how are they to be defined, what is their character and what does the Council seek to achieve in respect of them? Map02 of TLPI identifies five “heritage precincts”, one of which is outside the TLPI boundary (the Police Barracks). Some of the “precincts” involve dispersed groups of heritage buildings. How, for example, can it be honestly asserted that the Customs House, a solitary heritage building, forms part of a precinct including St John’s Cathedral which is a whole city block away. If the Customs House is included, not as part of a precinct but as a heritage place “setting”, then this is already adequately addressed by the Heritage Place Code.

The existing provisions of the City Centre Local Plan address the local environmental contexts of particular sites, in terms of their “macro” environment, which is a high density CBD, by imposing setbacks for podiums and towers, maximum GFA requirements, as well as height controls. The former are designed and operate so as to generate space about towers.

Impacts on the public domain are presently addressed in terms of shadowing, pedestrian shelter and active street frontages. Impacts on Heritage Places is addressed by the Heritage Place Code.

In terms of the relationships between site area and building intensity, this has been effectively controlled for the last twenty or more years through the “tangential rectangle”, GFA formula. The effect of this formula is to create space about buildings in proportion to the size of the relevant allotment. Provided an effective site cover of less than 0.35 is achieved, the height of the building can reach the maximum of 250m. This formula appears to have worked well.

As to connectivity between sites and across the CBD, this has evolved through podium design and frontage treatments and the evolution of publicly accessible spaces such as shopping malls and arcades. Such outcomes can be achieved under the current provisions of the City Plan, a recent example of which is Austcorp Limited’s “Vision” application for the site bounded by Margaret and Mary Streets.

Site amalgamations depend upon the market. It would be short-sighted and economically irresponsible to sterilise the development potential of land, because adjoining sites are not available for purchase. It stands to reason that site availability will occur where market economics facilitate it, as was the case in relation to the amalgamation of the “Aurora” site on the corner of Wharf and Queen Streets in the late 1980s. It took the best part of 15 years for a high rise mixed use building to emerge on the amalgamated site.

### 3.0 Outcomes of Current Controls

*“It is evident that the provisions which have evolved for the CBD and which are reflected in the Brisbane City Plan 2000 provisions have resulted in the approval of very tall buildings generally throughout the CBD, but in many cases on sites which are considered too small relative to the intensity of the building, and in particular, in their particular context”.*

The Council does not attempt to identify any of the “many cases” referred to in this paragraph. Only one such example has been publicly aired – the Emerald Tower – and even it has by no means been proved to be a bad design. The “particular context” is a matter of subjectivity and imports philosophical points of view as to, for example, what development, if any, should be allowed adjoining, or near, heritage places. The subjectivity involved in this particular aspect of “context” is exemplified by the recent attempt by the Council to list the Adelaide Street Precinct under both the City Plan and the *Queensland Heritage Act*. The independent heritage assessor from New South Wales exposed that exercise as biased, lacking in methodology and plainly wrong. Of course, if the TLPI which the Council seeks to justify, is in fact approved and adopted, the Council will not have to worry about whether its perception is biased or its methodology is wrong. The “particular context” will be of the Council’s choosing. It is relevant to ask in the context of this passage: “considered by whom?” Is this representative of a broadly based view, and if so where is the evidence of it?

That small sites are inappropriate for tower development is by no means a universally supported position. Whilst vehicle access and other servicing requirements can have the effect of taking up too much of the street frontage of a narrow site, diminishing the pedestrian environment, many small sites have multiple street frontages, including laneways and so their intense development does not result in that consequence. That particular aspect is a case for performance assessment on a site by site basis, not on the basis of site size alone. At least some leading architects do not agree that tall thin towers are undesirable architecturally. At any rate, they tend to be perceived from a distance rather than from the immediate street environment, and also to be read in a context that includes the towers of other high buildings. It is argued that some tall thin towers at Petrie Bight will relieve the somewhat oppressive presence of the wall of buildings on large sites that have been developed on the waterfront.

*“It is also evident that there is an inherent bias favouring residential floor plates such that extremely tall towers are now being developed and continue to be proposed for residential apartments. Had these developments been for commercial or administrative uses the market conditions would have dictated larger sites to accommodate the larger floor space necessitated by the needs of office accommodation.”*

If there is any inherent bias, it is that clearly evident in this statement which is a bias against further residential development in the CBD. This is contrary to all of the signals from the State Government, and good planning policy, that has evolved over the last few years in terms of the need for densification

of centres and urban renewal. The Council's position runs counter to what the OUM is trying to achieve with the South East Queensland Regional Plan.

*"The pro-residential use phenomena has resulted in some key sites which ordinarily would be more suitable for commercial buildings being lost for all time to residential uses. The loss of land for commercial development is critical in terms of the importance that such development brings to the vitality and richness of the CBD."*

The Council does not indicate which sites have supposedly been lost for all time to commercial and administrative use. The City Plan has encouraged mixed use with commercial uses occupying larger podium floor areas, with residential uses above. Is there a problem with this? If so, the Council does not explain it. It is difficult to see how the Minister is supposed to form an opinion about the need for the TLPI, without considering and evaluating such supporting evidence.

For many years, planners have been seeking to encourage residential development in the city centre, to increase its vitality and richness. In particular, the 24-hour city is a concept that has been promoted, intrinsically involving a substantial population living in the city centre. A local resident population will better support cafes, bars, restaurants and shops in the CBD, the qualities that will move it away from a street environment which empties out at 5pm. It seems ironic and inconsistent that BCC would now promote more commercial development as necessary to achieve the same end.

Whilst it is valid to consider the issue of ensuring that there are sufficient sites for the city centre to continue to evolve as the primary business and administrative centre in Queensland, that potential is not going to be eroded in the next two years. A recent study found at least fifteen sites suitable for large scale tower development under the City Plan, in the CBD, without going to redevelopment of the sites of existing substantial modern buildings.

The issue of how to manage the supply of sites for future development of commercial office space in the city centre is extremely complex. The draft City Centre Local Plan attempted to address this issue, crudely, by imposing a minimum site size of 1500 square metres. However, this does not squarely address the issue. Large amalgamated sites may still be developed for residential purposes (such as Aurora), or even for multiple residential towers. A more significant issue may be that large amalgamated sites may also be "underdeveloped", such as the Macarthur site, proposed as a sixty storey office tower in the 1980's, but recently developed for shops and only sixteen floors of offices. Historically, city centre planning has let the market determine the level of diversity of the city centre. It is by no means clear how an effective and desirable policy could be developed, to address commercial floor space supply. At any rate, it has by no means been demonstrated that the situation is urgent, requiring immediate intervention.

*"There is a marked trend that interest in very tall building development will continue. The enormity of existing approvals and proposals has been well documented, as has adverse public reaction to the scale of projects now being contemplated."*

The City has been through many trends over the past thirty years. They have not adversely affected the CBD's evolution into what is acknowledged as a vibrant and progressive City Centre, where a significant proportion of the population now wish to both live and work. In terms of centres generally, but obviously with particular relevance to the CBD, the City Plan provides:

***“Higher density residential development will be encouraged in centres both as mixed use development and residential buildings, which integrate and enhance the fabric of the centre and promote the use of public transport.*”**

*Developments that include residential uses will allow greater gross floor area and building height. These are identified in the Centre Design Code.*

*Residential accommodation in centres will not be expected to enjoy the same peace and quiet or privacy of suburban or semi-rural living”. (City Plan 2000 Chapter 7 Section 7.1)*

It seems odd that this encouragement which was clearly evident in the terms of the City Plan in 2000, has turned to concern and dismay. But where is the hard evidence to justify that concern? Where is the evidence of adverse public reaction? High rise residential development in the CBD was a non-issue in the elections for the Brisbane City Council in March this year, and there does not appear to be any electoral mandate for this back-flip.

Recent statements by the Mayor and others suggest that very high towers are appropriate in the City Centre. So why is the Council suggesting otherwise?

The use of the block diagram, as part of Council’s justification for the TLPI, apart from being misleading (further discussed below), causes grave concern about its level of understanding about the way that tall buildings in the CBD affect people’s perceptions of the CBD. The draft City Centre Local Plan, which sought to introduce height controls in the city centre, was widely condemned in professional and property circles. The basis of the proposals (a theoretical pyramidal form) was widely considered to be unachievable, undesirable, and inconsistent with the form of the city centre which is in fact emerging.

Tall buildings in the city centre, whether residential or commercial, add to its vitality and to the planned intensity and range of functions of the city centre. There is at any rate an existing 250m AHD impact assessment threshold. The Council has not provided any basis yet for requiring lower buildings and any such arguments are inconsistent with the long-established approach to planning in the city centre. That planning approach could have been adjusted at any point since the last “emergency” in 1988, when the Council sought State Government intervention.

*“The code for development in the CBD has been exposed as being inadequate to control the intensity of building form and the design issues now prevalent in the CBD. This not only applies to tall building development but also to development at the street interface and at the interface with heritage sites and places of social and cultural significance to the CBD. There is a need to address these provisions in more detail and to address what appears to be an imbalance in the use and form of new building development across the CBD.”*

This is an extreme statement which appears to be without foundation. No examples have been provided, other than the Emerald Tower Project, and even in the case of the Emerald Tower, there is no cogent evidence of adverse public reaction nor detrimental impacts. The architecture of the building is considered by many to be of a high standard. It is inherent in this paragraph of the Planning Statement that the Council considers there is a need to reverse its policy of encouraging residential uses in the CBD. Why? Where would the Council prefer such uses to be located? Does the Council have in mind a residential population cap for the CBD? As a matter of public policy, is densification in multi-purpose centres such as the CBD desirable or not?

Council has since 2000 included in its Local Plan provisions additional measures to control the form of buildings, closest to the street environment. Significantly, car parking is now required to be underground, enabling the lower levels of buildings which are most significant within the city centre environment, to be used for purposes which interact with that environment. That will prevent blank facades such as that of the new Riperian building, from being developed in new buildings. That is an example of the progressive introduction of new measures to improve city centre design, and additional measures may be introduced following the Master Plan process. However the present situation is not an emergency, with substantial immediate adverse consequences requiring intervention.

*“The inadequacy of the code is magnified when the powers of a planning authority to intervene in design and building bulk are limited by the provisions of IPA which require authorities to approve applications where there is code compliance. There is no option to refuse when the code is met.”*

This seems to be a gross oversimplification of the position, when the purposes and performance criteria of the City Centre Local Plan Code are considered. Fundamentally, the question to be asked in response to this paragraph is whether the public wants to continue with a system which has worked well for 30 years, and has achieved a growing and vibrant CBD which is now alive after hours and on weekends, or whether it wants to reverse that trend?

#### 4.0 Adverse Cultural Economic and Social Conditions

It is true that the market for residential units everywhere has grown significantly over the past five years. This is a cyclical phenomenon. The growth in residential units in the CBD has not been extreme in comparison with other major population centres in Australia, and the so-called resulting serious outcomes that are alleged to exist have not been supported with specific examples. Each is commented on as follows:

- “• *a loss of land required for the city to continue its role as the commercial centre for South-East Queensland;*”

Which land is the subject of this statement? No evidence has been provided of demand for commercial space over the life of the current planning scheme, nor any evidence to show that there is insufficient land available to meet that demand. Is this a perception rather than reality?

- “• *a loss of identity of the CBD, culturally, socially and economically;*”

How can it be the case that having people living in the CBD will cause it to lose its identity? If this “identity” is the current built form of the CBD, does this mean that the Council wants no more buildings? Is this a yearning for no further change? The recent development of the CBD has increased its diversity and enhanced its identity. The intensity of built form that is derived from tall city centre buildings tends to strengthen the image of the city centre as the vibrant centre of the State capital.

- *an imbalance between land use and the form of buildings evidenced by very tall building development and high residential densities on small parcels of land;*”

This statement evidences a bias against very tall buildings. It has to be remembered that we are dealing with the CBD of a modern, international, capital city. But it is not a CBD with any homogeneous historical architectural style (compared, for example, to Paris). It is an eclectic mix of buildings where a number of significant heritage buildings have been conserved, but which, apart from those heritage

sites, is moving towards modern architectural design, rather than trying to mimic the past. What is wrong with that? What is the balance which the Brisbane City Council seeks, and why is it suddenly emerging now?

- “• *constraints to the ability to amalgamate land of sufficient area for appropriate comprehensive CBD development and fragmentation of land holdings;*”

Site amalgamation is driven by the market and will happen when market conditions are right for large residential or commercial office towers. The Council has not needed the power to force amalgamations, or to sterilise landholdings until amalgamation happens. It does not need that power now.

- “• *fragmentation of land use character in various parts of the city;*”

Again, the Council has provided no tangible examples of such fragmentation. It should identify the parts of the City to which this refers, and explain how the land use character is being fragmented, because it is not evident to the lay observer.

- “• *impacts on the public domain, in terms of the visual quality, safety and useability;*”

The public domain comprises the public spaces, such as parks and streets that are accessible to the community, and includes parts of private property that are publicly accessible and function as public space. It is the privately owned parts of the public domain which can be lost through redevelopment. The publicly owned domain is subject to protection of nominated views and vistas to and from important viewpoints. The latter is already covered by performance criteria in the codes. Whether privately owned publicly accessible space should become de facto public space is an important philosophical issue. It involves a public benefit analysis of the proposed alternative.

- “• *potential network wide traffic impacts, and concerns about the adequacy of small sites to facilitate adequate on-site servicing;*”

Development on small sites has a smaller impact on the traffic network. Traffic impact is a relevant criteria in the assessment of code assessable applications. However, the City Centre is intended to be a place where movement to and within is encouraged on foot, by bicycle and public transport. The planning for the city centre in recent times has been geared to discourage use of the private car. It seems inconsistent to suggest this as a reason for emergency powers.

- “• *an undesirable city profile.*”

The questions which must be asked in this context is: “undesirable in whose opinion” and what makes the profile “undesirable”? Again, the Council’s use of the block diagram betrays a concerning lack of understanding of how the city centre is perceived. The pyramidal concept of city form is not consistent with the existing city centre environment, nor the development trends evident in the city centre (for example soon, four of the six highest buildings in the city centre will be next to the river). The Council has not produced any evidence to support or identify the profile(s) which are relevant, nor the contention that new high towers are inappropriate.

- “• *the adequate provision of social and outdoor recreation facilities;*”

Such facilities can be provided internally through the use of parts of a podium or tower, but more importantly, social and outdoor recreation facilities are abundantly available in terms of public spaces,

and walking and cycling tracks which pass through the CBD. There is absolutely no compelling case for the provision of such facilities external to proposed residential buildings. The current provisions of the City Centre Local Plan promote a form of development which includes building podiums up to the footpath edge in many locations, so as to form the street edge, and activate the pedestrian environment with shops, cafes and the like. Whilst no doubt on some sites the potential for “public recreational spaces” may be obtainable and appropriate, on many sites the planning for the city centre does not seek that, and instead requires a building that creates a hard edge with the public domain.

“• *the potential for outlook from balconies to be limited by adjoining or adjacent buildings – seriously reducing amenity in the future, and compromising privacy for residents.*”

It is axiomatic that those who live in a high density environment such as the CBD, will not enjoy the same level of amenity as those who choose to live in houses. The City Plan, as it stands, recognises this plain truth, while at the same time seeking to optimise residential amenity. Council seems to have been able to achieve reasonable outcomes in the administration of its present planning provisions.

The Council states that the rate of change is so significant, that unless action is taken immediately long term irreversible social and environmental impacts will result in the CBD. In other words, the Council wants to halt residential development in the CBD. This is contrary to what we all know is desirable in terms of the long-term liveability of the South East Queensland region. We must have densification in places like the CBD, if we are to prevent urban sprawl and maintain the liveability of this region. The Council’s evident change of heart will cut across this important macro planning initiative for SEQ.

#### 5.0 Action by Council

It needs to be remembered why the Council has decided to undertake a master planning exercise. The Council initially proposed a raft of amendments to City Plan which arbitrarily reduced maximum building heights in particular precincts. Among other things, the purpose was to achieve a particular profile for the CBD when viewed from a distance. This was criticised by a number of architects and planners as misconceived and unsupported by proper analysis. Strong reaction from the property sector, prior to the March 2004 Local Government elections, caused the Council to pause. The Council agreed to a master planning process, so that the whole issue could be analysed objectively. The Council did not say then that it proposed a TLPI. The Council now says that it will only be in 12-18 months that adequate controls will be available. This, of course, pre-judges the answers that are to evolve from the master planning process. It seems to assume that the outcomes will be those which the Council anticipates or expects. What if the ultimate answer is that there is no problem in terms of the so-called “imbalance” between residential and commercial uses, and the overall height profile of the CBD?

#### 6.0 Risk of Using Normal Amendment Process

This form of justification is nothing less than misleading scaremongering. It is absolutely impossible that the scenario painted in the block form sketch could eventuate in the next 12-18 months. The sketch is a gross and unrefined modelling exercise which gives no credence whatsoever to the existing provisions of City Plan, in terms of podium and tower set-backs etc. It is grossly misleading to suggest that such an outcome is realistically possible, either commercially, practically, or even theoretically in an 18 month period.

The sketch is inappropriate because:

- All buildings must be set back from frontages, above maximum podium height;
- One can only build a maximum building height building with an ESC of 0.35 – therefore there would be a lot of spaces around towers;
- There are numerous public open spaces which are nevertheless shown built to boundary to a height of 250m AHD;
- There are numerous heritage buildings (incl Treasury Building, Lands Office building) which are nevertheless shown built to boundary to a height of 250m AHD;
- There are numerous substantial buildings built in the last thirty years (including for example the Supreme Court Building) which are unlikely to be redeveloped any time soon, and which therefore are incontestably not part of any immediate problems which needs to be fixed;
- The view from a position 500 metres above the Mater Hospital is absolutely irrelevant in any planning discussion – how is the city centre really perceived in ways that are relevant from a planning point of view?

It is highly concerning that Council would seek to rely upon such a sketch diagram, the only illustration provided in justification of the TLPI, as a basis for its introduction. Surely, if the Council is to overturn the planning processes which have evolved over the last twenty years to manage the development of the city centre environment, and which have provided the framework for all of the desirable qualities that have emerged during that period, it would provide a more reasoned evaluation of the issues surrounding the impact of tall buildings on the city centre.

## Summary

In summary, the Planning Statement contains a litany of general propositions which are not backed up with any hard examples or evidence, as well as statements which are downright misleading. It is clear that what needs to happen now is that the master planning process should proceed, the outcomes should evolve, and whatever planning changes are needed consequent upon those outcomes, should be made in the normal way. The sweeping and unsubstantiated generalisations of the Planning Statement do not justify approval of the TLPI.

## The Temporary Local Planning Instrument (TLPI)

The TLPI is deliberately drafted so as to impose a subjective and highly discretionary decision-making process for the assessment of certain development applications in the CBD, instead of the current regime which involves a much more objective assessment process, based upon a clear set of rules (purposes, performance criteria and acceptable solutions). It has not been satisfactorily demonstrated why such a fundamental change is needed.

The circumstances in which the TLPI will apply have been reduced from those initially proposed in the Council's first draft of the TLPI. However, the TLPI is still a misconceived and inappropriate planning instrument which

will not produce particular desired planning outcomes, but rather will promote arbitrary decision-making and uncertainty.

### *The Definition of “TLPI4 Development”*

Whilst it is understood that the definition of TLPI4 development is intended to be used as a trigger for impact assessment, there is reason to be concerned about the foundation for the use of these thresholds, and whether they are a reasonable basis for changing the level of assessment to impact assessment, with all the attendant uncertainties implied.

- There is no explanation as to why a 15 metre maximum height above podium level for sites of less than 1,000m<sup>2</sup> has been chosen as the trigger. It is reasonable to ask why that level was chosen
- In terms of building work within 20 metres of the Brisbane River, it is noted that there are many existing developments where building work has been undertaken within 20 metres of the Brisbane River, for example the Riverside Centre, which is acknowledged to be a landmark building of exceptional quality. It is noted that the Riverside Centre development was under the previous town plan as “as of right” development subject to the notification of conditions. (This disproves the myth that good buildings cannot evolve from a code assessment process).
- The third criterion is land adjoining or within five metres of the alignment of a heritage place. Again, there is no satisfactory explanation as to why the existence of an adjoining listed heritage place should fundamentally constrain the development potential of adjoining land. The scope of this constraint is now proposed to be extended to buildings within five metres of the alignment of a heritage place. It seems that the planning intent is to take, or sterilise, land adjoining or near heritage places, because it is considered that adjoining development somehow negatively impacts on heritage place. The rationale for this assumption has not been explained. The evidence in the CBD and elsewhere suggests that in the case of isolated heritage places, there is no validity in the argument that they are negatively impacted upon by adjoining modern buildings. The CBD has many examples of old heritage buildings adjacent to modern towers such as the Customs House and Naldham House. The State Government’s development of the Suncorp Stadium adjacent to the old heritage listed church is another example. The Planning and Environment Court confronted this issue in *Urban Properties v. Brisbane City Council*, in which the Council was unable to convince the Court that a taller building on the site adjoining the eastern boundary of the Customs House would be detrimental to the Customs House. A twenty storey building had been approved and constructed on the western side of the Customs House, but an extra four levels on the Colonial Building on the eastern side was said, by the Council, to be detrimental. As the judgment of the Court shows, no such impact would result. This trigger reflects a particular point of view in relation to heritage conservation, which is not widely accepted, but it has the capacity to seriously erode the value of land in the vicinity of heritage places. This is an issue which needs to be better understood and defined. Throughout the world there are examples of modern structures beside old historic buildings. Classic examples of such contrasts are the Eiffel Tower and IM Pei’s glass pyramid in the courtyard of the Louvre. The Eiffel Tower was a very modern intrusion into an historic setting when it was built. This issue needs full debate and rigorous examination, and the Council must express clearly what it seeks to achieve in this regard.

- In terms of additional shading in certain identified public places, it is noted that this issue is already covered by a specific provision of the City Centre Local Plan Code entitled “Sun in public places”. Performance Criteria P8 provides that development must have regard to its shadowing impacts on public places around midday during the winter months, and it provides an acceptable solution in respect of proposals that do not increase the extent to which sunshine is blocked between noon and 2.00pm on 21 June, from the Botanic Gardens, Queens Gardens, King George Square, Anzac Square and Post Office Square. The trigger in sub-paragraph (d) of the definition precisely replicates the acceptable solution in the code. No explanation is offered as to why it is necessary to raise the level of assessment to impact assessment, in order to achieve this outcome.
- Trigger (e) involves a building greater than the height above ground level specified for a particular site on Map 3. The choice of city blocks with particular height limits seems to be arbitrary; no rational explanation has been provided as to why these heights were chosen. Is the Council seeking to pre-determine the outcome of the planning studies which will underpin the CBD master planning process? The similar map, which was used in the draft City Centre Local Plan advertised in February 2004, was severely criticised as lacking in any justifiable basis. Now it has reappeared to serve as a threshold for impact assessment.

It is noted that the definition of “local environment” is totally subjective, depending as it does upon the opinion of the Council **or its delegate** as to what is contextually relevant to the assessment of the application. The Council is aware that the Courts have said that the formation of such an opinion is to all intents and purposes beyond the reach of judicial review. This gives to the Council’s delegate a huge discretion in terms of crafting arguments to justify refusal of particular applications. This places very significant power in the hands of the Council’s delegate which may be used arbitrarily or capriciously. This is not desirable.

## **Section 4 – Purpose of the Temporary Local Planning Instrument**

This provision sets out five purposes which are cast in very broad terms.

Section 4(1)(a) throws a huge imponderable into the planning assessment regime for the CBD. The reason for this is simple – it gives to the Council and the Council’s delegate absolute discretionary power, through having the flexibility to argue that one particular proposal is consistent with “the cultural, economic and social conditions and qualities of the CBD” (whatever they are), and another is not. What criteria will guide the formation of this opinion? When will the rules become clear? It will be extremely difficult to test this criteria objectively. Legitimate applications will be able to be forced to appeal by the Council on this basis, and will then face considerable uncertainty and risk. It is likely to take some time before the Courts form a position in relation to this issue, which is wide open to argument. Do we really want that level of uncertainty?

Section 4(1)(b) has the purpose of seeking development which is consistent with the CBD design principles and development requirements. The relevant design principles and requirements are already embedded in the codes. Applications which conflict with the code may be refused.

Section 4(1)(c) seeks development of a nature, scale and form that “does not compromise the role of the CBD as the centre for commerce for South East Queensland and the centre for Government for the City of Brisbane and Queensland”. This seems to be a signal that further residential development in the CBD is considered to

compromise the commercial and administrative functions of the CBD. If that is not the case, then what is this provision aimed at? This is a confusing and unclear purpose statement, given the strong support currently within City Plan for denser residential development in centres. It is a statement of such generality as to be almost meaningless.

Section 4(1)(d) is a collection of “special qualities” of the CBD setting, which development should not compromise. There is considerable uncertainty surrounding a number of them, in terms of how a project might compromise that quality. For example, what are “precinctual characteristics”? Where are the precincts and what are their characteristics? How would a proposed development compromise the special qualities of the CBD street pattern?

Finally, Section 4(1)(e) seeks to embed the “Coty Principle” in the TLPI by precluding conflict with “the measures upon which the CBD master plan will focus and the capacity of the CBD master plan to decide outcomes to be realised”. The Brisbane City Council has promised that there will be extensive consultation in respect of the CBD master plan. The Council has stated that it expects the master plan will take 12-18 months to evolve, and be translated into amendments to City Plan 2000. There will obviously be a period when “the measures upon which the CBD master plan will focus” will not exist. Those measures will ultimately evolve and along the way some may be discarded. The same comment applies to the master plan’s desired outcomes. If it is the case that the master planning process is to be open, transparent and evolving, with full consultation with owners of CBD properties, residents of the CBD and the wider population, why is it implied in the drafting of Section 4(1)(e) that the measures and outcomes are already known to the Council? When this provision is read in combination with Clauses 4(2) and 5(3), it becomes clear that the purpose of the TLPI is to make development assessment completely discretionary, thus effectively imposing a freeze on development until the amendments to the City Plan, consequent and upon the master planning process, have been adopted by Council. This approach is contrary to good economic policy and cannot be justified in terms of desirable planning outcomes.

Clause 4(2) in essence says that the outcome in Clause 4(1), which is an outcome that nobody, not even the Planning and Environment Court, will be able to define or identify, takes precedence over “demonstrated need for a use” and “public and community benefit” resulting from proposed development. This seems illogical and unsound policy.

## **Section 5 – Operation of this Temporary Local Planning Instrument**

All TLPI4 development is made impact assessable. The purpose of this is to avoid the stricter assessment regime applicable to code assessable development. This provision is structured so as to make it as easy as possible for the Council’s delegate to argue that there is a conflict with City Plan, through the deeming provisions in Clause 5(3).

Section 5(4) suspends only inconsistent provisions of City Plan. Which provisions are inconsistent? No attempt is made to identify them. It might be thought that at this point in time the Council does not know which of the current provisions of City Plan will be inconsistent with the TLPI. Finding out the answer will be a process of trial and error, but again, the Council has given itself ultimate discretionary flexibility to achieve the result it desires in response to particular applications.

Frankly, this is a dreadful situation. It throws a pall of uncertainty over all TLPI4 a development. It makes it almost impossible for consultants to undertake design with any certainty, and to advise their clients, because they simply will not know the rules. Those rules will reside in the mind of the Council's delegate. The list of potential inconsistent provisions set out in Section 5(4) demonstrates clearly what the Council is prepared to cast aside, in order to arrogate total discretion to itself. A prime example is the desired environmental outcomes of City Plan for centres "to the extent that the CBD providing the highest order of uses and highest densities of residential development, could be construed to anticipate or support TLPI4 development inconsistent with this instrument". Where does this leave us?

## Section 6 – CBD Design Principles and Development Requirements

Section 6 of the TLPI contains a range of criteria with which new development proposals assessed under the Code must comply. These include many general statements of planning principle. In some cases, no one would disagree with the sentiments expressed. In other cases, the criteria and principles are contentious, and is unclear what the instrument's policy direction is or will be, and how it can be applied on any particular site.

As a matter of general concern about all of the content of Section 6, the criteria are so generally expressed that it will be impossible to obtain guidance about how they are to be applied in relation to proposed development on any site. For example, Criterion 2(c) requires that development, *"if involving residential components occurs in locations that do not compromise the predominant business and commercial role of the CBD and the orderly achievement of business and commercial uses, including the capacity to amalgamate and ensure key sites are used for commercial, office and administrative purposes"*. It is impossible to understand how this criterion can be applied to any particular site. Issues arising include:-

- There is no established, critical shortage of sites for commercial redevelopment;
- There is no part of the city where residential development has been prohibited nor arguably, where it should be prohibited, given the mixed use character of the CBD which historically has been promoted (for example, even in the heart of the financial quarter, the Riparian building currently under construction has been approved with residential components);
- Amalgamation of large sites does not automatically result in their subsequent use for commercial development.
- If, contrary to the above, it was considered desirable to introduce zones of the city centre where only commercial development on large sites would be permitted, that would represent an enormous shift from current planning approaches, requiring substantial justification and consultation – that such a policy shift, could be achieved ad hoc, in the assessment of development applications under the TLPI, would be highly inappropriate.

Section 6(2) states:

*"TLPI development is to be of a height that has a positive relationship to the characteristics of the particular site and its local environment, and is to occur only on sites that are of sufficient size and configuration, and in a suitable location to ensure it: ... (b) occurs on a site which has sufficient area and dimensions to ensure the height and scale .. are in proportion to the site configuration..."*

These are examples of criteria for which it will be extremely difficult (impossible) for Council officers or planning consultants advising developers, to provide any consistent guidance. The inclusion of such general statements, as yardsticks for assessing development, flies in the face of the objectives of the government, espoused at the time of the introduction of the Integrated Planning Act and since, to provide certainty to developers through clearly expressed guidelines about development.

Section 6(2)(c) states:

*“(development) only occurs when the development proposal is able to make a positive contribution to the overall domain of the CBD, such as the creation of high quality public space on site as a primary rather than residual part of the proposal”* Whilst on some sites it will be highly desirable to provide spaces usable by the public, which contribute to the public domain, in many other instances, well-designed development, built to frontages, should and will make no such contribution, consistent with the philosophies underpinning the planning of the city centre currently. It is very difficult to understand how such a criterion can be interpreted, in relation to the development many sites which will be caught by the TLPI provisions.

There are a number of intractable issues underpinning the drafting of the criteria of Section 6 and indeed the other provisions of the TLPI. For reasons which have been alluded to above, the satisfactory resolution of these issues may prove elusive, in the drafting of revised provisions for the City Centre Local Plan, which follows the Master Plan. Issues in this category include:

- Encouraging amalgamation of larger sites;
- Balancing the development of residential apartments with other city centre uses, especially commercial offices;
- Providing additional spaces in the public domain, while maintaining building forms that strongly address the street environment;
- Mediating a city centre building height profile;
- Developing precincts of definable predominant character.

To put forward criteria, in the TLPI, which are related to these issues that are very complex to resolve, will create a climate of great uncertainty, if the TLPI is implemented. These criteria cannot be employed transparently and consistently, especially as expressed in the current TLPI, and this will compromise the advancement of the purpose of the Integrated Planning Act, to provide an accountable and efficient decision-making process in the CBD, the location of the most intense and diverse investment in the Queensland.

## Overview Comment

There seems to be an assumption underpinning the TLPI that once the CBD master plan has been completed, and the City Centre Local Area Plan and Code have been amended, it will not be possible for applicants to apply for development under the superseded provisions. If this perception is correct, it should be of great concern to the owners of CBD properties. The Deputy Premier and Treasurer recently said, in connection with the IPOLA 2004 legislation, that the Government had no intention of interfering with superseded planning scheme applications and compensation rights, in circumstances where a planning restriction does not arise from



State legislation. If it will be possible for landowners to make superseded planning scheme applications for a period of two years after adoption of changes to the City Centre Local Plan, then what is the point of the temporary rules if not to simply freeze everything? Perhaps the Council thinks that the TLPI is a statutory instrument which will have the same effect as the ultimate scheme amendments, thus excluding the right to compensation? If so, the public should be very concerned because this cuts right across the fundamental understanding of the property sector underpinning the compensation provisions of the IPA. It cannot be the case that a TLPI, which is an instrument made for the purpose of bringing about changes to a planning scheme, of itself destroys the right to compensation arising out of those changes. These are fundamental issues which go to the heart of the new planning system set up under the IPA.

The TLPI will create confusion for developers, landowners, professional consultants and potential submitters. It will open all TLPI4 development to argument and create fertile ground for submitters, whether they be commercial competitors or community groups to obstruct or delay projects through appeals.

None of this is in the best interests of the community, the economy of the CBD, good planning for the CBD or the stability of the planning system. It will frustrate the purpose of the Act, to promote accountable and efficient decision-making processes.